

**Ofcom consultation: Applying spectrum pricing to the aeronautical sector – a second consultation.**

21 April 2010

The Board of Airline Representatives in the UK (BAR UK) Ltd is the industry association for scheduled airlines in the UK, and has almost 90 member airlines. Full details of our organisation can be found at [www.bar-uk.org](http://www.bar-uk.org).

Our members comprise three major UK airlines and over 80 foreign ones, many of whom also overfly the UK.

**Opening comments**

BAR UK opposes the application of Administered Incentive Pricing (AIP) to the use of aeronautical VHF communications frequencies in the band 117.975 to 137 MHz.

The application of AIP would do nothing to increase efficient use of spectrum nor would it provide any value for the airlines that would eventually end up paying the AIP through a tax on their services. Aviation is developing its own spectrum strategies through the Single European Sky (SES) and other international initiatives that require national and international government coordination. The appropriate forum for management of aeronautical spectrum use should therefore be with government, in this case, with the UK Department of Transport (DfT).

**1. Introduction - Aeronautical spectrum**

BAR UK welcomes the opportunity to respond to this consultation and appreciates Ofcom's willingness to meet with us on a number of occasions and listen to our concerns. We support the need for efficient use of radio spectrum for aviation services and the industry is developing spectrum strategies to ensure this is the case.

The application of AIP to any of the internationally allocated aeronautical spectrum would achieve nothing but an increase in revenue to the UK Government. In the case of AIP application on VHF, this would probably be around GBP 1.3m per year and the airlines would have to pay the bill.

**International concerns**

The spectrum aviation uses is allocated internationally by World Radiocommunication Conferences whose outcomes are signed by States, including the UK, and have treaty status. IATA has emphasized this at every opportunity to Ofcom, and BAR UK supports their position.

Our spectrum is internationally-allocated for a reason.

The systems that use aeronautical spectrum are certified and harmonized by ICAO and the ITU. The spectrum they use must have adequate protection from interference to ensure safety and regularity of flight harmonized throughout the world. Other non-aeronautical systems do not need or have this level of integrity. Aeronautical spectrum cannot be used by a service that is not subject to the same stringent controls as aviation systems.

Aviation on its own, and certainly the airlines, cannot unilaterally change how they use radio spectrum.

The Ofcom consultation on applying spectrum pricing to the maritime sector published in August 2009 proposed that the strategic management of radar and radionavigation spectrum should be assumed by the UK Department for Transport (DfT). The basis for this included the Government's obligations under ICAO, its role in international negotiations and its specific expertise and ability to coordinate with all stakeholders. We believe these reasons apply to all international aeronautical spectrum. BAR UK contends that the Government, through the Department for Transport (DfT), should assume the strategic management of aeronautical spectrum.

### **Safety**

Safety is the airlines' first priority. Although passengers do not pay specifically for safety, it is certainly not an externality as the consultation states. The consultation makes some rather amazing claims that link safety with commercial concerns:

“In the aeronautical sector, a ‘positive externality’ will arise where the socially optimal level of safety provision is greater than the level implied by individuals’ willingness to pay for safety measures. (5.68 of consultation)

For instance, customers place a high value on ensuring their own safety (e.g. when purchasing flights), and hence there are significant commercial incentives on airlines, airports and private aerodromes to provide the highest levels of safety, and to develop reputations for safety. However, it is not necessarily the case that individuals take into account risks that their use of the airspace (and spectrum airwaves) may impose on others when they decide on how much to spend on safety measures. Accordingly, from the point of view of society, ‘private’ spend on safety may not necessarily reflect the (higher) socially optimal level.” (5.69 of consultation)

Safety is not something that the airlines market like sleeper beds or individual in-flight entertainment systems. It is a critical part of their operations no matter how much a passenger pays for a ticket.

Airlines are subject to stringent certification, regulation and standardization in respect of their aircraft, systems and procedures to ensure safe and regular flight.

Whilst we agree that the UK DfT must ensure safety in UK airspace according to its ICAO obligations, this does not give other bodies the right to do whatever they want and leave safety to the UK government and its agencies. The Government's safety responsibility justifies its involvement in management of all aeronautical spectrum since safety is an inherent part of that process.

## **2. AIP on Aeronautical VHF spectrum**

### **The Efficiency Enigma**

Ofcom's starting point is that AIP is intended to increase aviation's efficient use of spectrum. This presumes that spectrum is not being used efficiently – that something is “broken” and needs fixing.

BAR UK would be interested in knowing what Ofcom considers as not efficient and if that is not clear, how can AIP “fix” it.

The Helios/Plum Impact Assessment states:

“It is not the purpose of this study to inform the level of AIP that is efficient, nor is it the purpose of this study to demonstrate that economic benefits of applying AIP outweigh the costs.”

“The purpose of pricing is to promote efficiencies that cannot all be anticipated in advance. It is not therefore possible or meaningful to attempt to fully anticipate the efficiency responses to pricing”

The impact assessment itself cannot confirm how AIP could fix an unidentified inefficiency. This is a strange business case and not a convincing one to the airlines who would pay the price.

The effectiveness of applying AIP to deliver greater efficiency depends on the ability of the user to change behaviour in response to the pricing. Ofcom has not proven that this approach is valid for aviation.

Due to the international considerations listed at the beginning of this document, an individual service provider has very little, if any, flexibility to make changes to VHF frequency requirements without jeopardizing operations.

The solutions to achieving efficiency benefits within the aeronautical VHF spectrum are already being developed. The Single European Sky (SES) programme includes a Spectrum Strategy for spectrum utilisation, efficiency and management. European aviation and IATA, in its global role, are also coordinating plans to ensure that appropriate spectrum is available to support current and future communications, navigation and surveillance systems and that such the systems involved use the spectrum in the most efficient way. The UK and the airlines based in the UK support and contribute to these initiatives.

### **Congestion and Demand**

This consultation focuses on proposals for the application of AIP with the aeronautical VHF band based on the perception that this band is heavily congested and demand exceed supply. It implies that there is excess demand from both outside and inside the aeronautical community.

Demand for VHF spectrum originates from the need to provide safe and efficient services within a heavily regulated infrastructure. The frequencies are managed and the flexibility to make changes is limited if not impossible outside of the international framework.

Ofcom has not identified the source of external demand for our VHF spectrum and applying AIP to meet internal demand is certainly not an acceptable option. Surely aviation would not be taxed in order to force it to meet its own demand?

The Ofcom consultation also proposes base AIP fees on the Business Radio model that sets fees on a basis of geographical variation based on demand, i.e. fees would vary on the location of the

transmitter. This is not appropriate for aviation that uses the whole of UK airspace and thus cannot be charged on the basis of a ground-based pricing structure.

BAR UK does not agree that, by applying different rates for 25 kHz and 8.33 kHz channel spacing, Ofcom seems to be rewarding efficient use of VHF spectrum. However, the move to 8.33 kHz was mandated internationally, it was not an arbitrary airline decision on how best to use spectrum.

### **Airlines ability to pay AIP**

Previous Ofcom consultations concentrated on the idea of AIP being based on an opportunity cost of spectrum to users who were denied access to specific bands.

This consultation has shifted to a quite extraordinary argument based on revenues and on the taxes airlines already pay as the basis for them to be able to pay more.

In 2009, the airlines paid GBP 732 million in UK en-route and terminal navigation charges. This does not include the additional final approach and tower service charges for all the UK airports. Airline passengers paid GBP 2.4 billion in 2009 for air passenger duty (APD) in the UK. The fact that we have been obliged to pay such enormous amounts to the UK is not a rational basis for asking us to pay more.

Ofcom has also suggested that airlines pay for all their other infrastructure so why should radio spectrum be different? The main difference is that airlines have some control over how they use their aircraft, which routes they follow and which airports they use. Airlines cannot decide which spectrum they use – this is outside of their control due to international and safety considerations.

### **Manage not charge**

No matter how AIP would be applied, it would invariably end up as a tax on already heavily taxed airlines. A tax without benefit, no matter how small, is still an unjust tax.

BAR UK supports DfT involvement in strategic management of aeronautical VHF spectrum in the same way as the spectrum used for radar and radio navigation aids is being handled. We believe, that if Ofcom is really serious about efficient use of spectrum, a strategic management role should be given to the DfT, and AIP should not be considered.

### Consultation Questions

*Question 1: Do you consider that our proposed fee rates for licences in the aeronautical VHF frequencies are appropriate?*

- BAR UK response: AIP on aeronautical VHF frequencies is not appropriate no matter what the level of fee rates.

*Question 2: In devising our revised proposals, have we identified all of the aeronautical uses of VHF communications frequencies which require a distinct approach to fee setting, as set out in tables 5 and 6?*

- BAR UK response: AIP on any spectrum used for any aeronautical VHF communications is not appropriate.

*Question 3: Do you agree with our proposal not to charge any fees for Fire assignments?*

- BAR UK response: No comment as emergency service use of spectrum assignments is out of our purview.

*Question 4: Do you agree with our proposal to set a £75 fee for licences in any of the sporting frequencies?*

- BAR UK response: No comment

*Question 5: Do you agree with our proposal to set an annual fee of £19,800 per ACARS or VDL assignment, with no variation related to the number of transmitters?*

This question differs from Question 5 as stated in paragraph 7.18 of the consultation that reads: *Do you agree with our proposal to set an annual fees of £9,900 and £19,800 per channel respectively for ACARS or VDL assignments, with no variation related to the number of transmitters used in such channels?*

- BAR UK response: No matter which question is considered, AIP on aeronautical VHF frequencies including those used by ACARS or VDL is not appropriate.

*Question 6: Do you consider that our proposed general approach to phasing in fees for use of the aeronautical VHF communications channels are appropriate? If there are particular reasons why you consider that any user or group of users would need longer phasing-in periods, please provide any supporting evidence for us to consider. Specifically, do you have any evidence for us to consider that would support either of Options 1 and 2 for the highest proposed fee in this sector?*

- BAR UK response: AIP on any aeronautical VHF frequencies is not appropriate no matter how much or how it is phased in.

*Question 7: Do you have any further quantified information to contribute to the analysis of financial impacts of the proposed fees on particular spectrum users, as set out in Annex 5? We would like to publish all responses, but will respect the confidentiality of any material which is clearly marked as such.*

- BAR UK response: The financial impacts seem to be based on revenues earned and movements that at some airports even include those for emergency services. The financial impact is deemed to be minimal, however, with no justification of how AIP would improve anything, it would just be cost with no benefit.

*Question 8: Do you consider that our assessment of the impacts of our proposals has taken full account of relevant factors? If you consider that there is additional evidence that would indicate particular impacts we should take into account, we would be grateful if you could provide this.*

- BAR UK response: AIP on aeronautical VHF frequencies would achieve nothing. It would be a tax pure and simple. Strategic management of these frequencies should be given to the UK DfT in the same manner as those for radio and aeronautical radio navigation aids.